

**Request for Reconsideration**

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**REMARKS**

The examiner has again rejected claims 1 and 9 under 35 U.S.C. 102 based on U.S. Patent 4,951,664 to Niemeryer. The main point of contention now boils down to a disagreement as to how the term “breathable” is to be constructed in the claims of this application. The examiner states (see office action page 6) as follows:

However, nowhere within Applicant's written description is the meaning as asserted by the Applicant wherein "a sufficient amount of air for breathing" is to be provided via the filtering material. Thus, Examiner is entitled to use the common denotation of the term "breathable" and further the term "breathable" within the context of fabrics wherein the term refers to the ability of a fabric or clothing to transmit air and/or moisture.

Thus, it appears that the examiner contends that the art to which the subject matter of this application pertains is the art of “fabrics”. Applicant on the other hand contends that the art to which the subject matter of this application pertains is the art of “facemasks”.

The first two paragraphs of 35 U.S.C. 112, set forth below, are helpful in determining what art this application pertains to.

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The written description speaks to one of ordinary skill in the art to which the invention pertains. The invention is described by the claims. A look at each claim in the application shows that it is related to a “facemask”. None of the claims are directed to a “fabric”. Each reference in the specification to “breathability” is discussing a property of a “facemask” and not a “fabric”. Thus, it is clear that the subject matter of the invention is “facemasks” and

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that applicants definition is the one used in that art. Applicant is not trying to change the ordinary meaning of the term but the one which would be understood by one of ordinary skill in this art.

With the definition of “breathable” to one of ordinary skill in the facemask art it is clear definition as previously submitted is correct. Thus, as argued before this application as it stands is allowable and such allowance is respectfully requested.

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**CONCLUSION**

In light of the foregoing, Applicant respectfully submits that all rejections have been overcome and that the pending claims are in condition for allowance.

Applicants believe that no fees are necessitated by the present Amendment. However, in the event that any fees are due, the Commissioner is hereby authorized to charge any such fees to Deposit Account No. 06-0923.

If the Examiner believes that a telephone conversation with Applicant's attorney would expedite allowance of this application, the Examiner is cordially invited to telephone the undersigned attorney at the number provided below.

Dated: April 13, 2009

Respectfully submitted,

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